

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 525 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GANESH NATRAJ

Versus

STATE OF GUJARAT

Appearance:

MR KG SHETH for Appellant

Mr.S.R.Divetia, Addl.PUBLIC PROSECUTOR for Respondent

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

Date of decision: 21/03/98

ORAL JUDGEMENT (Per Soni J.)

Appellant - accused in Sessions Case No.44/91 was held guilty under sec.302 I.P.C. and sentenced to R.I. for life by learned Sessions Judge, Surat on 29.6.91. Said judgment and order is under in this appeal.
The facts which led the prosecution of the

accused are as under:

One Hiralal Thakordas Kabrawala was residing with his wife and children in house no.45, on 2nd floor in Hindu Garden Colony, in Rudarpura, Surat. He had 10 powerlooms and was also running a lorry for omelet. At his omelet lorry, he had employed 4 servants, one of whom was the accused. His servants also used to work at his residence in off hours of the work on lorry. Accused was employed by him some 15 days before the date of accident. In the morning of 18.9.90, accused has come to his house at about 11.00. Son of complainant was to go for Tirupati and accused had come to see him. Son of the complainant went to Railway Station after breakfast and his daughter went for tuition and another son went to play. After counting the cash received on the previous night, complainant was informed by his wife to go for bath. Ganesh was asked to place bucket of hot water in the bathroom on the upstairs. Ganesh placed that bucket and came back and complainant went upstairs. While complainant was brushing his teeth, he heard the noise "I am killed - I am killed". He immediately came down and saw in the bed room that his wife was lying injured in bleeding condition on the floor and the bag which contained money was lying on the bed. He saw the accused Ganesh with knife. Thereafter, Ganesh threw away that knife and ran away from the room by climbing down the stairs. Complainant just chased to catch hold of the accused, but when he came downstairs, accused was ahead and he informed his son and nephew, who chased him and caught him back. His injured wife was taken to the Hospital and when he reached hospital, she was already declared dead. Police Inspector of Athwa Lines Police Station, on receiving information, reached in the Civil Hospital and the complaint was recorded.

Police Inspector P.W. 11 then sent the complaint for registering the offence and started investigation. On completion of the investigation, chargesheet was submitted against the accused in the court of J.M.F.C., 3rd Court, Surat, who, in his turn, committed the accused to the court of Sessions to stand his trial.

Learned Sessions Judge framed charge against the accused, to which accused pleaded not guilty and claimed to be tried. Prosecution led necessary evidence to prove the charge levelled against the accused. On completion of the prosecution evidence, further statement of the accused was recorded, from which it transpires that the defence of the accused is of total denial. Learned Sessions Judge, after hearing the learned Advocates for prosecution as well as defence, found the accused guilty of the offence of sec.302 I.P.C. The learned Sessions Judge, however, found him not guilty of charge under

sec.397 I.P.C. and accused was acquitted of the same charge. Order of conviction under sec.302 is under challenge in this appeal.

Learned Advocate Mr.K.G.Sheth has challenged the conviction on the ground that all the prosecution witnesses, on whose evidence the conviction is based, are related to the deceased and they are all partisan and interested witnesses. In absence of any independent corroboration to their evidence, it would be hazardous to accept that evidence and the learned Sessions Judge has erred in accepting the said evidence. Mr.Sheth contended that there is no independent evidence worth the name and the appeal should be allowed.

Mr.Divetia, learned A.P.P., supports the judgment of the learned Sessions Judge. Mr.Divetia contended that the incident took place in the house and there can be no independent witness in the house when an incident takes place. Mr.Divetia further contended that the evidence of the complainant, husband of the deceased, is corroborated by the evidence of his brother and niece, who are residing at the floor down below their floor and before whom deceased has made a dying declaration. Mr.Divetia contended that this part of evidence of dying declaration is not challenged so as not to accept the same. Mr.Divetia, therefore, contended that the appeal be dismissed.

Learned Advocate for accused has not seriously disputed the fact that deceased has died a homicidal death. Dr.Meghrekhaben Mehta P.W.8 has performed autopsy and she has found the following external injuries:-

- "1. Stab wound seen present over right cubital fossa, oblique 12 cms x 3 cms x 3 cms in size, red in colour. Angles are acute. Margins are clear-cut. Vessels and muscles in the cubital fossa are cut.
2. Stab wound seen present over back of right elbow, 5 cms below right elbow, oblique 4 cms x 3 cms. Sub cut deep in size, red in colour. Angles are acute; margins are clear-cut.
- 3.Stab wound seen present over right side of crt. chest wall, 12 cms below & 4 cms lateral from the right nipple (towards right side) oblique 4 cms x 1 cm cavity deep.

She had also found the following internal injuries:-

- "Corresponding to ext. injury no.3 in column 17,
- there is a wedge shaped tear over right lobe of liver on its anterior surface and interior border. The end (depth) of the wedge is going downwards and forwards to the left; perforating right lobe as well as lt. lobe of liver through

& through over its anterior surface & interior border."

Cause of death certified by her is shock and hemorrhage as a result of stab injury (injury to the vital organ liver). In her evidence, she has stated that external injury no.3 is sufficient in the ordinary course of nature to cause death. Thus, prosecution has proved that deceased has died a homicidal death.

Question is : who caused said three external injuries, as a result of which internal injury corresponding to external injury no.3 is caused. According to prosecution, it is the accused who has caused the said injury and to prove the same, prosecution relies mainly on the evidence of P.W.1 Hiralal Thakordas; P.W. 2 Hasmukhbhai Thakordas; and P.W. 3 Sonalben Shashikant.

P.W. 1 in his evidence has stated that on 18.9.90 at about 10.30 to 10.45 A.M., he was in bathroom on the terrace of his house. There, he heard the shout of his wife saying "died, died" and he came down immediately. On his coming to downstairs, he saw accused standing with a knife. That knife was meant for cutting vegetables and it was stained with blood. When he came down, accused threw away that knife and ran away. He saw his wife lying injured near the door. He then ran behind the accused and he could not ask anything to his wife. However, his wife told him that accused Ganesh was stopped by her from taking out money from the bag. He has, therefore, inflicted knife injuries and has run away. He chased the accused upto the corner of the street, where his son Sanjay met him. He informed him and came back while his son Sanjay and other boys chased the accused. When he came home, he found that neighbours of the street were bringing his wife to downstairs. His wife was injured on the right hand, rear part and on the right side of the belly. By that time, his brother Hasmukhbhai P.W. 2 came with rickshaw and she was removed to the Hospital. Defence has not been able to bring out anything in the cross-examination to doubt this version of P.W. 1. This version of P.W. 1 is further supported by the evidence of P.W.2 and P.W. 3. In the evidence of P.W.2 Hasmukhbhai, a question is put in the cross-examination and it is replied that his brother's wife was conscious and on enquiry in the rickshaw on the way to hospital, his Bhabhi told him that servant Ganesh has inflicted blows with knife. An attempt is made by Mr.Sheth, learned Advocate, to show that this statement is not made by the witness in his Police statement and witness has admitted to that effect. Therefore, this is a very relevant contradiction, which seriously affects

the truthfulness of the evidence of this witness. In our opinion, this statement that witness was informed by his brother's wife in rickshaw on the way to hospital that she was injured by servant Ganesh is a statement made by the witness in the cross-examination to a question put by the defence lawyer. Normally, the prosecution witness is required to state before the court in his examination-in-chief what he has stated before the Police. If a witness states something more or something less or something different than what he has stated before the Police, then that addition or omission or difference is required to be proved by the evidence of investigating officer. This is how contradictions can be proved by way of omission, by way of contradiction or by way of improvement. In the instant case, a question is put in the cross-examination and then it is contended by the defence that the witness has not so stated before the Police. In our opinion, this cannot be said to be a contradiction, either by way of omission or improvement. Thus, say of P.W.1 that his wife told him that she was injured by their servant Ganesh is corroborated by the evidence of P.W. 2. This part of evidence is further corroborated by the evidence of P.W.3 Sonalben, the niece of the deceased. She has stated before the court that on enquiry from her aunt about the incident, she had told her that when Ganesh attempted to take money from the bag hanging on a peg on the wall, he was stopped and, therefore, he has inflicted knife blows on her. Nothing has been found in the cross-examination of this witness Sonalben P.W.3 to reject her evidence. By this part of her evidence, P.W.3 also corroborates P.W.1. All these three witnesses, namely, P.W.1, P.W.2 and P.W. 3, have stated that deceased had injuries on the side, on the right hand and on the right hand elbow. No doubt, there is some contradiction about the injury on the shoulder, but, in our opinion, that cannot weigh to the effect to reject the whole of the evidence of all the three witnesses, namely, P.W.1, P.W. 2 and P.W.3.

Prosecution has relied on evidence of blood stained clothes of the accused, but, in our opinion, the clothes of the accused are produced by Police Officer before panchas, alleging that they are entrusted to him by the doctor in the Civil Hospital. In our opinion, this cannot be a full-proof evidence and, therefore, we do not propose to take any corroboration from the same.

Mr.Sheth contended that there is no motive coming on record in the instant case. In a criminal trial when there is an ocular direct evidence of the commission of the act, which amounts to an offence, it is not necessary that there should always be a motive and established by the prosecution. In our opinion, in the instant case,

from the evidence of P.W.1, motive is proved by the prosecution and that motive is that when the deceased tried to stop the accused from taking money from the bag, it appears that he was annoyed and he has inflicted injuries on the deceased. However weak this motive may be, it appears to be the immediate cause of commission of the offence.

Accused was charged under sec.397 of I.P.C. for having robbed the money from the bag, which was hanged on the wall. That bag was lying in the cot when P.W.1 came downstairs on hearing the shouts of his wife. According to him, said bag did not contain full amount which he had placed in it. However, learned Sessions Judge has acquitted the accused of the charge under sec.397, as it appears that no money was found from the person of the accused though he was caught just immediately. We are not concerned with the order of acquittal recorded by the learned Sessions Judge. However, the fact remains that from the evidence of P.W.1, P.W.2 and P.W.3, it is established that it is the accused who has inflicted knife blow on the person of the deceased.

Evidence of P.W.1 is further corroborated by an independent evidence of Harish P.W.4. Harish is a neighbour, staying just opposite to their house. He heard shouts of deceased to the effect that she is dead. On hearing the shouts, when he saw from his house, he saw wife of P.W.1 lying in a bleeding condition. He, therefore, asked from his own house to Manjulaben as to what had happened and she replied that her servant had inflicted knife blow to her and ran away. No doubt, name of the servant is not disclosed to this witness, but the fact remains that servant of Manjulaben has inflicted knife blow on Manjulaben. This part of evidence, in our opinion, corroborates the say of P.W.1, P.W.2 and P.W.3.

In view of the above fact, when the evidence of P.W.1, P.W. 2, P.W.3 and P.W.4 is cogent and convincing, we do not find any reason to hold that the learned Sessions Judge has erred in accepting their say. We, therefore, do not find any reason to interfere with the reasons and conclusion arrived at by the learned Sessions Judge.

In the result, the appeal fails and is dismissed.
